

**OPINION
52-97**

November 3, 1952 (OPINION)

RECORDING DEEDS

RE: Transfer by County Auditor

Yours of October thirtieth relative to refusal of the register of deeds of Williams County to record certified copy of patent to the above land for the reason that the taxes for 1951 have not been paid thereon, has come to my desk for reply.

In your conversation with me a few days ago, you stated that this patent was issued in 1911 to the homesteader named in the Final Receipt already of record in his name. And, further, that the present record owner is the person in whose name the land is taxed. It appears that the original homesteader never put his patent of record. He transferred the land to another deed, and the present owner holds by virtue of this deed to mesne conveyances. The recording of the patent at this time is only necessary to complete the chain of title. It does not "transfer" the title from the present record owner to any other person.

Section 11-1312 N.D.R.C. 1943 provides:

"Whenever a deed or patent is presented to the county auditor for transfer * * * ."

The "transfer" mentioned refers to a "transfer" on the tax records from the name of the record owner in whose name the land was taxed to the name of the person to whom the deed or patent presented transfers the property in order that for the succeeding years the land may be taxed in the name of the actual record owner. Certainly, the patent you hold does not and does not purport to transfer the title from the present record owner to the grantee named in the patent. The record shows that he no longer has any interest in the property, and certainly no one can contend that the county auditor should enter a "transfer" of the title from the present record owner to the grantee named in the patent. The record shows that he no longer has any interest in the property, and certainly no one can contend that the county auditor should enter a "transfer" of the title from the present record owner to the patentee.

Therefore, it is our opinion that when your patent was presented to the register of deeds for record, he was not required to present it to the auditor for the entry of a "transfer," since the instrument did not purport to effect any transfers of title to anyone and did not authorize or require the auditor to enter a transfer to anyone.

Section 11-1802 N.D.R.C. requires the register of deeds to "refuse to receive or record any deed or patent unless there is entered thereon a certificate of the county auditor showing that a transfer of the lands described therein has been entered - -."

Since the patent does not authorize or require such a transfer to be entered, the auditor cannot make such a certificate, and if he does make such a certificate, such a transfer certainly is without authority of law and void. It would only require suit at law to untangle the mess.

Since no transfer may be entered, certificate can be made by the auditor and the instrument should be recorded, without any certificate of the auditor. Since your company will probably have numerous occasions to record instruments to clear title and which do not make any transfer of title from the present record owner, we believe it would be well for you to test this matter by writ of mandamus, if the register still refuses to record this patent.

ELMO T. CHRISTIANSON
Attorney General